



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 01, 2022

IN THE MATTER OF:

Appeal Board No. 622549

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 622549, 622550, and 622551, the claimant appeals from the decisions of the Administrative Law Judge filed March 18, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective beginning March 9, 2020 until the reason for ineligibility no longer exists; charging the claimant with an overpayment of \$3,720.75 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$4,800 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; an overpayment of Lost Wages Assistance (LWA) benefits of \$300 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 0 effective days (inadvertently misstated to be 8 effective days in the hearing decision) and charging a civil penalty of \$1,278.11 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded an opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. Since the initial

determinations in this case were issued more than one year after part of the period of ineligibility, and wilful misrepresentation by the claimant must be

established for the Department of Labor to have had the authority to issue the determinations under the provisions of Labor Law Section 597(3), the Board finds that further testimony and evidence is necessary to determine whether the claimant made wilful misrepresentations in connection with her claim for benefits.

Although the determination refers to certifications made by the claimant on August 3 and August 10, 2020, the file includes prior certifications covering part of the same period as the August 10, 2020 certification, which indicate that the claimant advised the Department of Labor that she was not capable of work. Specifically, the claimant's application for Pandemic Unemployment Assistance (PUA) benefits, dated July 3, 2020, includes pages of retroactive certifications for the period beginning with the week ending March 30, 2020 through the week ending June 28, 2020, each of which asks the claimant to indicate whether she was able to work, and how many days each week she was not ready, willing, and able to work. This application and these certifications, pages 38 through 49 of the file, shall be received into evidence after the appropriate confrontation and opportunity for objection. The claimant shall be prepared to be questioned regarding her July 3, 2020 responses to the certification questions, and whether, how, and why her answers differ from the responses she provided as part of the certifications on August 10, 2020, in particular as they relate to her ability to work.

In addition, the file includes a series of "Secure Messages" between the claimant and a Department of Labor representative in September, October, and November of 2020 in which the issue of the claimant's ability to work is discussed. Although the dates of these messages are outside the period during which the Department of Labor contends that benefits were overpaid, they might prove useful in assessing the testimony provided by the claimant regarding her August 3 and August 10, 2020 certifications. These messages, in the file at pages 31 through 33, shall be received into the record after the appropriate confrontation and opportunity for objection.

The hearing Judge may receive any additional evidence into the record deemed necessary to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of the claimant's eligibility and capability effective March 9, 2020, the recoverable overpayment of benefits, and whether the claimant made wilful misrepresentations to obtain benefits, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER